

**LIABILITY PROTECTIONS FOR CHARITY  
CARE**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Peter C. Knudson**

House Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Pharmacy Practice Act and the Health Care Providers Immunity From Liability Act.

**Highlighted Provisions:**

This bill:

- ▶ extends the gross negligence standard to a health care professional who:
  - works in a health care clinic that does not receive any compensation from any source for caring for patients; and
  - does not receive any remuneration or compensation for caring for the patient other than from the health care facility; and
- ▶ provides that the Pharmacy Practice Act does not prevent a health care professional from personally dispensing medications to a patient, free of charge, if the health care professional has prescribing authority and works in a health care facility whose primary purpose is to provide care without compensation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



AMENDS:

**58-13-3**, as last amended by Chapter 299, Laws of Utah 2005

**58-17b-610**, as enacted by Chapter 280, Laws of Utah 2004

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **58-13-3** is amended to read:

**58-13-3. Qualified immunity -- Health professionals -- Charity care.**

(1) (a) (i) The Legislature finds many residents of this state do not receive medical care and preventive health care because they lack health insurance or because of financial difficulties or cost.

(ii) The Legislature also finds that many physicians, charity health care facilities, and other health care professionals in this state would be willing to volunteer medical and allied services without compensation if they were not subject to the high exposure of liability connected with providing these services.

(b) The Legislature therefore declares that its intention in enacting this section is to encourage the provision of uncompensated volunteer charity health care in exchange for a limitation on liability for the health care facilities and health care professionals who provide those volunteer services.

(2) As used in this section:

(a) "Health care facility" means any clinic or hospital, church, or organization whose primary purpose is to sponsor, promote, or organize uncompensated health care services for people unable to pay for health care services.

(b) "Health care professional" means individuals licensed under Title 58, Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists, chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, other nurses licensed under Section 58-31b-301, and licensed Direct-entry midwives.

(c) "Remuneration or compensation":

(i) (A) means direct or indirect receipt of any payment by the physician and surgeon, health care facility, other health care professional, or organization, on behalf of the patient, including payment or reimbursement under medicare or medicaid, or under the state program for the medically indigent on behalf of the patient; and

(B) except as provided in Subsection (3)(b)(ii), compensation, salary, or reimbursement to the health care professional from any source for the health care professional's services or time in volunteering to provide uncompensated health care; and

(ii) does not mean any grant or donation to the health care facility used to offset direct costs associated with providing the uncompensated health care such as medical supplies or drugs.

(3) A health care professional who provides health care treatment at or on behalf of a health care facility is not liable in a medical malpractice action if:

(a) the treatment was within the scope of the health care professional's license under this title;

(b) (i) ~~neither the health care professional nor~~ the health care facility ~~received~~ does not receive compensation or remuneration for the treatment of the patient; and

(ii) the health care professional does not receive any compensation or remuneration for the treatment of a patient, except compensation from the health care facility;

(c) the acts or omissions of the health care professional were not grossly negligent or willful and wanton; and

(d) prior to rendering services, the health care professional disclosed in writing to the patient, or if a minor, to the patient's parent or legal guardian, that:

(i) the health care [professional] facility is providing the services without receiving remuneration or compensation;

(ii) the health care professional is providing the services to the patient without charge and is not receiving any remuneration, except from the health care facility; and

(iii) that in exchange for receiving uncompensated health care, the patient consents to waive any right to sue for professional negligence except for acts or omissions which are grossly negligent or are willful and wanton.

(4) A health care facility which sponsors, promotes, or organizes the uncompensated care is not liable in a medical malpractice action for acts and omissions if:

(a) the health care facility meets the requirements in Subsection (3)(b);

(b) the acts and omissions of the health care facility were not grossly negligent or willful and wanton; and

(c) the health care facility has posted, in a conspicuous place, a notice that in

accordance with this section the health care facility is not liable for any civil damages for acts or omissions except for those acts or omissions that are grossly negligent or are willful and wanton.

(5) Immunity from liability under this section does not extend to the use of general anesthesia or care that requires an overnight stay in a general acute or specialty hospital licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

Section 2. Section **58-17b-610** is amended to read:

**58-17b-610. Patients' immediate needs.**

(1) (a) This chapter may not be construed to prevent the personal administration of drugs or medicines by practitioners licensed to prescribe in order to supply the immediate needs of their patients.

(b) Immediate need for a patient includes giving out drug samples for up to a three-day supply or the amount necessary to determine the best pharmaceutical agent for that specific patient.

(2) This chapter may not be construed to prevent the personal dispensing of drugs or medicines by a practitioner:

(a) who is licensed to prescribe;

(b) who is providing medical treatment through a health care facility whose primary purpose is to provide uncompensated care as defined in Section 58-13-3;

(c) who is dispensing the medicine or drug free of charge to the patient; and

(d) in order to supply the patients with drugs or medicines that are necessary for the patient's treatment.

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**Legislative Review Note****as of 1-5-06 9:38 AM**

The modifications in this bill to the qualified immunity provisions for charity care raises open courts and equal protection constitutional concerns. This bill extends the protection against liability for medical malpractice to health care providers who receive compensation from a charity care facility that only provides free medical care, except when the health care provider commits gross negligence. This limitation of liability to gross negligence may be challenged under Article I, Section 11 of the Utah Constitution which provides "All courts shall be open, and every person, for an injury done to him in his person, property or reputation, shall have remedy by due course of law, which shall be administered without denial or unnecessary delay." The law may also be challenged under the equal protection provisions of Article I, Section 2 of the Utah Constitution. Equal protection demands that persons similarly situated should be treated similarly under the law. This bill would treat persons harmed by medical malpractice differently based on whether the person received free care at a facility that provides only free care, or whether the person received free care at a facility that provides free care and paid care. In the first situation, the person could not sue for an injury unless there was gross negligence. In the second situation the person could sue for an injury by proving simple negligence. This different standard may be challenged as a violation of equal protection under the law.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0133**

**Liability Protections for Charity Care**

*18-Jan-06*

*6:32 PM*

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**State Impact**

No fiscal impact. This bill has a Legislative Review Note. There may be additional state costs if the bill is challenged in court.

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**Individual and Business Impact**

Any fiscal impacts will be dependent on individual cases and cannot be quantified at this time.

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**Office of the Legislative Fiscal Analyst**